



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

FREDERICK D. PIÑA,

Plaintiff,

-against-

THE UNITED STATES OF AMERICA,

Defendant.

20-CV-1371 (PAE) (BCM)

## ORDER

**BARBARA MOSES, United States Magistrate Judge.**

On April 1, 2022, *pro se* plaintiff Frederick Piña filed a letter-motion (Dkt. No. 64) constituting his fifth attempt to vacate the May 12, 2021 Opinion and Order issued in this action by the Hon. Paul A. Engelmayer, United States District Judge (Dkt. No. 31), which dismissed the portion of plaintiff's FTCA claim seeking \$146 million in lost business profits arising out of an accident between his automobile and a USPS vehicle, and his third attempt to do so on the ground that plaintiff adequately presented that \$146 million claim to the USPS in a letter dated March 16, 2019, sent by his former counsel Thomas W. Hochberg to USPS Tort Claims Adjudicator Supervisor Kimberly A. Herbst. On March 15 and March 31, 2022, respectively, Judge Engelmayer denied plaintiff's two prior vacatur motions made on this ground. (Dkt. Nos. 58, 62.)

On April 14, 2022, during a telephonic scheduling and status conference, I gave the plaintiff an opportunity to withdraw his April 1 letter-application without penalty. I explained the risks that he faced (including the risk of sanctions should he persist in filing repetitive motions on grounds already considered and rejected by the Court), recommended that he consult with counsel, and directed him to notify the Court of his decision, in writing, no later than April 21, 2022, *without additional argument*. I repeated these directions in my written Order dated April 15, 2022 (Dkt. No. 71) (April 15 Order), which expressly warned Piña – again – that he could face sanctions, and reminded him that his notification letter, due on or before April 21, 2022, "may not include new argument regarding the relief he seeks." April 15 Order ¶ 3(e).

Later that same day, Piña filed a letter (April 15 Ltr.) (Dkt. No. 73) in which he (i) declined to withdraw his most recent attempt to vacate Judge Engelmayer's dismissal of his purported lost business profits claim,<sup>1</sup> and (ii) presented two pages of new legal argument as to why, in his view, Judge Engelmayer's May 12, 2021 Opinion and Order – as well as his decisions denying plaintiff's previous efforts to vacate that Opinion and Order – were "fundamentally flawed and outright illegal." April 15 Ltr. at 1-2.

1. Plaintiff Piña having elected to pursue his most recent vacatur motion, it is hereby ORDERED that the United States may respond, by letter, no later than April 29, 2022. If defendant responds, plaintiff may reply, by letter, no later than **May 6**,

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<sup>1</sup> Piña also informed the Court that he intends to pursue his appeal (*see* Dkt. No. 68) from Judge Engelmayer's March 31, 2022 denial of his *last* motion to vacate the Opinion and Order dismissing his \$146 million lost business profits claim. *See* April 15 Ltr. at 1.

**2022.** If defendant does not respond, the April 1 letter-motion will be determined on the present record.

2. Plaintiff Pina having violated this Court's express order that no additional argument be included in his notification letter, it is **FURTHER ORDERED**, pursuant to Fed. R. Civ. P. 16(f), that plaintiff pay the sum of **\$100** to the Clerk of Court, as a sanction, no later than **May 6, 2022**.

Plaintiff is reminded that his *pro se* status does not permit him to violate the orders of this Court or exempt him from sanctions should he do so. *See, e.g., Koehl v. Greene*, 424 F. App'x 61, 62 (2d Cir. 2011); *Vermont Teddy Bear Co. v. 1-800 Beargram Co.*, 373 F.3d 241, 247 (2d Cir. 2004).

Dated: New York, New York  
April 25, 2022

**SO ORDERED.**



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**BARBARA MOSES**  
**United States Magistrate Judge**